

DOCKET FILE ORIGINAL

FILED

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

JUN 29 1993

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|--------------------------------|---|----------------------|
| In the Matter of |) | MM Docket No. 92-270 |
| |) | |
| Amendment of Section 73.202(b) |) | RM-8110 |
| Table of Allotments, |) | |
| FM Broadcast Stations, |) | |
| Channel 271A (102.1 mHz) |) | |
| LIBERTY, NEW YORK |) | |

TO: Chief, Allocations Branch
Policy and Rules Division
Mass Media Bureau

REPLY

Michael S. Celenza (hereafter Petitioner), by his attorneys, and pursuant to Section 1.415(c) of the Commission's rules (47 C.F.R. §1.415(c)), hereby replies to the Comments on and Counter-proposal to Notice of Proposed Rule Making, filed January 12, 1993, and the Supplement to "Comments", dated January 18, 1993, of Preston Mark Pollack and Susan Lea Pollack (hereafter the Pollacks). In support thereof, Petitioner respectfully states as follows:

1. By Notice of Proposed Rule Making, DA 92-1475, released November 23, 1992, the Commission instituted rule making looking toward the allotment of Channel 271A at Liberty, New York, as that community's first competitive local aural service. Interested parties were invited to file comments on or before January 14, 1993, and replies on or before January 29, 1993.

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2. On January 11, 1993, Petitioner filed Comments in support of his proposal. On January 12, 1993, the Pollacks filed their Comments on and Counterproposal to Notice of Proposed Rule Making urging the Commission to substitute Jeffersonville, New York, for Liberty as the Channel 271A community of license. The Pollacks also filed a Supplement to "Comments", dated January 18, 1993, which was served on counsel for Petitioner by mail on January 19, 1993 (see Appendix A hereto).

3. Petitioner will confine his reply to the assertions made by the Pollacks concerning the proposed allotment of Channel 271A at Liberty. Petitioner reserves the right to respond to the Pollacks' Jeffersonville counterproposal, if and when the Commission accepts the counterproposal for filing and invites interested parties to comment thereon.

4. In their January 12, 1993, Comments, the Pollacks assert that the "coordinates of the [Liberty] allocation and probable antenna site as forwarded in the NPRM are of such low relative elevation that it makes it impossible that a clear signal would even reach Liberty" and that even "assuming a 300 foot tower, a preliminary terrain shielding study shows that with Sullivan County's extremely roughed terrain, any new radio station would find it impossible to broadcast with a clear signal into Liberty from the location as proposed by [Petitioner] in his petition." The Pollacks further represent that "Dataworld has not completed printing of the terrain shielding study by today [January 11,

1993], but we will forward that study to the [Commission] the moment it is completed."

5. By Supplement to "Comments", dated January 18, 1993, the Pollacks submitted a terrain shielding study which purports to indicate that "even with a 300 [foot] tower at a ground elevation of 1,700 [feet] AMSL, Liberty, the community of license proposed by [Petitioner] is totally shielded from the proposed signal referenced by coordinates used by [Petitioner]."

6. The Commission should not consider the Pollacks' technical argument. By their own admission, the terrain shielding argument advanced in their initial Comments was not timely supported by competent evidence. Their Supplement to "Comments" was late filed after the January 14, 1993, deadline in contravention of Section 1.415(d) of the Rules ("No additional comments may be filed unless specifically requested or authorized by the Commission."). See FM Broadcast Stations (Lincoln, Osage Beach, Steelville and Warsaw, Missouri), DA 92-538, released May 13, 1992 (footnote 3).

7. In any event, the Pollacks' terrain shielding argument is meritless. As reflected in the annexed technical exhibit of Petitioner's Technical Consultant (Timothy Z. Sawyer) the terrain shielding study provided in the Supplement is not based on coordinates specified either by Petitioner or by the Commission (See Appendix B hereto). Rather, the Supplement specifies a location in a low lying area where no reasonable person would locate an antenna site to serve Liberty. Moreover, the Supplement

does not take into consideration various combinations of height and power at various locations which would meet all protection requirements to existing stations and allocations (Ibid.).

8. In sum, the technical argument asserted by the Pollacks is procedurally defective, inaccurate, incompetent and wholly without merit.

9. As noted in Petitioner's October 1, 1992, Petition For Rule Making, Liberty is a community of substantial size (1990 population - 4,128) which is presently served by a commonly owned AM-FM combination (WVOS(AM)-FM). The allotment of Channel 271A would provide Liberty with its first competitive local aural service (Notice, supra, ¶2). The Commission should allot Channel 271A to Liberty.

Respectfully submitted,

MICHAEL S. CELENZA

By: James K. Edmundson
James K. Edmundson

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DATED: January 29, 1993
[46350]

APPENDIX A

TECHNICAL EXHIBIT
FM TABLE OF ALLOTMENTS
CHANNEL 271A, LIBERTY, NEW YORK
MM Docket No. 92-270
RM-8110

Petitioner: Michael S. Celenza

Narrative

This technical narrative was prepared on behalf of Michael S. Celenza, petitioner, in support of his proposal to amend the FM Table of Allotments (47CFR 73.202) to add FM Channel 271A, as a fully spaced Class A FM Commercial Service, to serve the community of Liberty, New York.

This office, as technical consultant to Celenza, has evaluated the January 18, 1993 Supplement to "Comments" of Preston Mark and Susan Lea Pollack, hereinafter "Pollacks", with regard to alleged terrain shielding of the principal community to be served, Liberty, New York, and can find no technical merit to the information provided to the Commission by Pollacks.

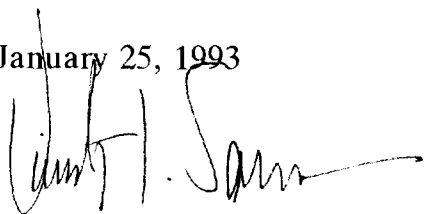
The terrain shielding showing provided in the Supplement is based on geographical coordinates specified neither by the Commission nor by Celenza. The site location (coordinates) used in the Supplement locate the site in a low lying area, with a ground elevation of 1340 feet (408 meters) above mean sea level, while the

surrounding terrain average height above sea level is 1542 feet (470 meters). A site not under consideration by Celenza.

Further, the Supplement fails to consider various combinations of effective radiated power (ERP) and height above average terrain (HAAT) available to Celenza and other prospective applicants, at various locations in the surrounding countryside which meet all protection requirements to existing stations and allocations.

Additional information, if required, concerning the technical merits or methods employed in preparation of this technical narrative may be obtained by contacting the office of the undersigned.

January 25, 1993

A handwritten signature in black ink, appearing to read 'Timothy Z. Sawyer', with a long horizontal flourish extending to the right.

Timothy Z. Sawyer

T.Z. Sawyer Technical Consultants
6204 Highland Drive
Chevy Chase, MD 20815
(301) 913-9287

APPENDIX B

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right of the return address

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P 344 436 330

MAIL

PRESTON POLLACK
378 CLEMENTS RD.
LIBERTY, N.Y. 12754

RETURN RECEIPT
REQUESTED

First Class Mail
First Class Mail

JAMES K. EDMUNDSON, ESQ.
GARDNER, CARTON & DOUGLAS
1301 K STREET, NW
SUITE 900, EAST TOWER
WASHINGTON, D.C. 20005

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CERTIFICATE OF SERVICE

I, Virginia L. Davidson, a secretary in the law offices of Gardner, Carton & Douglas, do hereby certify that true copies of the foregoing "REPLY" were sent January 29, 1993, by first-class United States mail, postage prepaid, or as indicated by hand to the following:

Michael C. Ruger, Chief
Allocations Branch
Policy and Rules Division
Mass Media Bureau
Federal Communications Commission
2025 M Street, N.W., Room 8318
Washington, D.C. 20554
(BY HAND)

Leslie K. Shapiro
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Preston Mark Pollack
Susan Lea Pollack
378 Clements Road
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Virginia L. Davidson